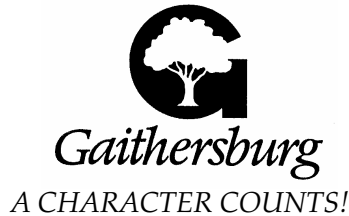


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CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
TUESDAY, JANUARY 2, 2007

A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Alster, Edens, Marraffa, Schlichting (arrived 7:35 p.m.), and Sesma. Staff present: City Manager Humpton, Assistant City Managers Felton and Tomasello, Planning and Code Administration Director Ossont, Planner Patula, Parks, Recreation and Culture Director McGleish, Public Works, Parks Maintenance and Engineering (PWPME) Services Director Mumpower, Grants Administrator Boyle, City Attorney Borten and Executive Assistant Stokes.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by Parks, Recreation and Culture Director McGleish.

II. INVOCATION

In lieu of an invocation, Mayor Katz called for a moment of silence.

III. APPROVAL OF MINUTES

Motion was made by Council Member Alster, seconded by Council Member Marraffa, that the minutes of the Mayor and Council meeting held December 18, 2006, be approved.

Vote: 3-0-1 (Abstained: Edens)

IV. CONSENT ITEMS

1. Resolution of the Mayor and City Council Authorizing the City Manager to Enter Into a Contract to Purchase One (1) 2007 Chipper Truck with Snow Plow

This resolution authorized the City Manager to purchase the above from Criswell Chevrolet, 503 Quince Orchard Road, Gaithersburg, Maryland 20878, in the amount of Sixty-Eight Thousand One Hundred Forty Dollars (\$68,140); said funds to be expended from the Operating Budget.

2. Resolution of the Mayor and City Council Authorizing the City Manager to Enter Into a Contract to Purchase One (1) 2007 Cab and Chassis Truck with Knuckle Boom Trash Loader

This resolution authorized the City Manager to purchase the above from K. Neal International Truck, Inc. 5,000 Tuxedo Road, Hyattsville, Maryland 20781, in the amount of Ninety-Five Thousand Seven Hundred Forty-Eight Dollars (\$95,748); said funds to be expended from the Operating Budget.

Motion was made by Council Member Marraffa, seconded by, Council Member Edens, that Consent Agenda (Resolution Nos. R-1-07 through R-2-07), be approved.

Vote: 4-0

V. APPOINTMENTS**Resolution Confirming Reappointments by the Mayor**

This resolution confirms the following: **Animal Control Board**, Dr. Victor Katz, 33 Muddy Branch Road and Mark Hackman (Alternate), 64 Appleseed Lane, Gaithersburg, Maryland 20878, three-year terms; **Economic Development Committee**, Robyn Renas, 211 Briscoe Street, Gaithersburg, Maryland 20878, three-year term; **Environmental Affairs Committee**, John Hudson, 214 Tulip Drive, Gaithersburg, Maryland 20877, two-year term; and the **Multicultural Affairs Committee**, Dr. Gilberto Zelaya, 18545 Cherry Laurel Lane, Gaithersburg, Maryland 20879, two-year term.

Motion was made by Council Member Edens, seconded by, Council Member Alster, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING REAPPOINTMENTS BY THE MAYOR TO THE ANIMAL CONTROL BOARD, ECONOMIC DEVELOPMENT COMMITTEE, ENVIRONMENTAL AFFAIRS COMMITTEE, AND MULTICULTURAL AFFAIRS COMMITTEE (Resolution No. R-3-07), be approved.

Vote: 4-0

VI. PUBLIC APPEARANCES

City Attorney Borten reminded the Mayor and City Council that the records on several agenda items are closed.

1. *Jud Ashman, 46 Napa Valley Road*, expressed concern with the process for the proposed adequate public facilities ordinance before the City Council for final action. He referred to the proposed six year proposed ordinance. He asked that the public have an opportunity to comment.
2. *Rosalind MacLennan, HOA liaison for the Courtyards at RIO, 9718 Athletic Way*, referred to the sale of private property by owners to Crown Farm developers and the lack of protection of their community by the City. She expressed concern with the density, pedestrian walkways and sidewalks proposed for the development affecting private property. Mayor Katz responded that the sale of private property is be between the owners.
3. *Judy Christensen, 6 Walker Avenue*, referred to the request to demolish the historic Talbott House and stated that the applicant has not shown sufficient economic hardship. She stated that the owner is looking to make a huge profit and asked that the Historic District Commission to be responsible stewards of Gaithersburg's history and protect and preserve its historic structures.
4. *Mke Stumborg, 15 Walker Avenue*, asked that the City allow public input during the process of selecting a new police chief.
5. *Daniel Reeder, 11520 Game Preserve Road*, asked the City Council to defer their vote on the adequate public facilities ordinance because of the proposed six year school capacity test. He stated that any material change should be part of the public process.
6. *Susan Payne*, expressed concern with the rise of crime, pedestrian safety, loitering and disorder in Gaithersburg due to the behavior of day laborers. She asked the Mayor and City Council to maintain a safe community for its citizens.
7. *Demos Chrissos, Tschiffely Square Road*, also expressed concern with the rise of crime and encouraged the Mayor and City Council to bring an end to the day laborer issues. He asked the City Council to not wait, but vote on the proposed solicitation ordinance.
8. *(inaudible), Gaithersburg resident*, expressed concern with the Crown Farm development and the City protecting the adjacent communities from the proposed pedestrian paths proposed by the new

development. He asked the Mayor and City Council to serve all of its citizens. Mayor Katz responded that the City of Gaithersburg has no jurisdiction over the area where he lives nor the sale of land between private property owners.

9. *Steve Shrimen, Gaithersburg resident*, made comments regarding the leadership of the County Council not enforcing laws and promoting illegal immigration. He stated that taxes and costs to Maryland citizens has become overbearing.
10. *Eydie Searles, 18 Walker Avenue*, expressed concern with the recent violent crimes in Olde Towne Gaithersburg and the safety of the kids in the Historic District. She also expressed concern with jay walking throughout the City.

VII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS

The Mayor and City Council echoed Happy New Year wishes to the residents of Gaithersburg.

Council Member Sesma

1. Encouraged residents to participate in the City's Strategic Planning process at the work session scheduled for Monday, January 8, 2007.
2. Announced that the City of Gaithersburg is encouraging its high school senior residents to apply for a W. Edward Bohrer, Jr. Memorial CHARACTER COUNTS! Scholarship. Application forms, which are due in March, are available on the City's website or call the City's Human Services Division at 301-258-6395 for more information.

Council Vice President Alster

Reported that the Federal Communications Commission (FCC) met in December and recently issued of notice of a proposed ruling that would implement prohibitions on local franchising authorities. The notice stated that any issuing of a franchise must now do so within a 90 day time frame from receiving the request or the requestor is given a limited authority to provide service with a right-of-way permission in that municipality, if not, then they are given 180 days. In addition, he stated that a requirement was put in place to prohibit build outs before service can be provided. Furthermore, restrictions were put on in kinds and on public education and government channels from requiring more of a competitor coming in than the competitors already providing service in the community. In addition, a fee structure was put in place that would give preferential service or higher speed to certain users. The FCC Agreement would require the owner of a line to provide equal service at an equal price to anyone who chooses to use the lines.

Council Member Marraffa

Referred to the FCC restrictions and stated that the National League of Cities fought for the rights of local franchising authorities.

Council Member Edens

Announced the vacancies on various City committees and boards.

Council Member Schlichting

Announced that the Mayor and City Council and senior staff will attend an annual dinner meeting with the District 17 Maryland State Legislative Delegation on Wednesday, January 3, 2007, 7 pm at the Gaithersburg Senior Center, 80A Bureau Drive, to discuss the City's 2007 State Legislative Agenda and to receive a briefing from the delegation on key issues for the upcoming legislative session.

Mayor Katz

1. Read the following statement:

"The Mayor and City Council will hold an annual retreat for the purpose of reviewing the City's Strategic Plan and enhancing the working relationship among and between the Mayor, members of the City Council, and management staff. This year's event is scheduled for Friday, January 19 through Saturday, January 20, 2006 at the Loews Annapolis Hotel located at 126 West Street, Annapolis, Maryland.

In keeping with the policy we have followed regarding our retreats each year, we are publicly announcing the date and location. This will provide our citizens and other interested parties notice in the event they would like to attend the portion of the proceedings that are open to the public. This information is posted at City hall, and on the City's website.

The City Council and I believe that holding a retreat is important and productive because it allows us the opportunity to come together, away from the day-to-day responsibilities of the City government, our jobs and our homes, to work together and focus on important City issues in an informal setting.

We will begin on Friday evening, January 19, with dinner for the Mayor and City Council members and staff. This is purely a social occasion and is not open to the public.

On Saturday, January 20, the retreat will be held from approximately 8 am until 4 pm. The entire event will be open to the public. Staff will make presentations on various topics and the Mayor and City Council will review the Strategic Plan in its entirety. The formal agenda will be posted on the City website as soon as it is finalized by City staff.

Minutes will be kept of all public portions of the retreat and will be available for review. Staff will provide an overview of what was discussed and accomplished during the regular Mayor and City Council meeting on Monday, February 5, 2007. Additional discussion will be held on the Strategic Plan during our upcoming FY 2008 budget process.

Anyone who would like more information about the retreat may call Assistant City Manager Felton at 301-258-6310."

2. Announced an essay contest for 4th grade students, entitled, "If I were Mayor," sponsored by the City of Gaithersburg, Maryland Municipal League and the Maryland Mayors Association. Deadline for entries is April 1, 2007. Visit the City's website at www.gaithersburgmd.gov for additional information or call the Human Services Division at 301-258-6395.

3. Announced the following meeting schedule:

- Work Session scheduled for Monday, January 8, 2007 to receive public input on the City's 2007 Draft Strategic Plan.
- Regular meeting of the Mayor and City Council schedule for Tuesday, January 16, 2007.

VIII. FROM THE CITY MANAGER

Responded to a citizen regarding input on the search for a new police chief. He stated that a job announcement was placed on the City's website and other websites. In addition, he met with the City's Police Chief's Advisory Committee to receive their input. He stated that there will be an opportunity for the public to give input. City Manager Humpton stated he will be seeking authorization later in the meeting to hire a consulting service to assist with the selection process.

Council Member Sesma questioned comments made earlier in the meeting regarding the rise in crime. He suggested the possibility of implementing a beat system and asked that the City do more to further educate the public on pedestrian safety. City Manager Humpton responded that public awareness is needed and a work session can be scheduled to explore the topic further, but stated that he believes

the City's Police Department is doing a great job policing communities. Mayor Katz mentioned that he served on the County's Gang Task Force and they found that prevention and community involvement is important to keeping a neighborhood safe.

IX. PUBLIC HEARING

Gaithersburg Affordable Housing Program Regulations

Grants Administrator Boyle introduced the public hearing and stated that on November 6, 2006, the City Council approved an affordable housing ordinance that became effective November 27, 2006. Section 24-256 of Ordinance requires the adoption of implementing regulations to provide administration, enforcement, pricing, and eligibility requirements, control period for ownership, waiver procedures and resale restrictions. During the work session held on November 13, 2006 to discuss the draft regulations, staff received guidance for revisions from the Mayor and City Council. In addition to providing an administrative framework for the affordable housing program, the regulations establish a 30-year control period that would run continuously and not be re-set upon the sale of a unit. This 30-year period would apply to both homeownership and rental units. The regulations also establish the amount of equity an owner will realize when a unit is sold, both during the control period and when the control period expires. She further stated that for the first sale of a unit after the control period expires, an owner may sell a unit at market price, but the amount of equity a seller may earn will depend on the ownership period. For every year of ownership, the seller will earn 2.5 percent of the profit, accruing up to a 50 percent share if a unit is owned by the same household for 20 or more years. The remaining 50 percent of the profit will be dedicated to an Affordable Housing Fund for the purpose of developing additional affordable housing opportunities throughout the City. Additional changes to the revised regulations pursuant to Council guidance included the definition of household, the expansion of priority participants, the per-unit fees required to be paid by Olde Towne developers who build residential units which is subject to an annual review by the Mayor and City Council and made be revised by resolution, mechanism for rounding partial numbers for the number of units required, requirement that mix of MPDUs and WFHUs be comparable to the mix of market rate units in the overall development. Provisions were added to allow an affordable unit owner to act as a guarantor on another dwelling unit so long as he/she does not maintain an ownership interest in that dwelling, to allow an affordable unit owner to place a purchase contract on another dwelling unit provided the affordable unit is sold prior to settlement on the new unit, also to allow a spouse to be added to an affordable unit deed in the case of marriage, and finally, changes and additions were included in the pre-approved items eligible for fair market value credit at the time of sale.

Speakers from the public:

1. *Cathy Drzyzgula, 16 Walker Avenue*, congratulated the Mayor and City Council and staff on their efforts to implement an affordable housing program and regulations.
2. *Pamela Lindstrom, 421 Gaither Road*, stated that staff has done a good job, but asked that a fee penalty be in place for the exemption made to Olde Towne developers to produce revenue. She also asked that the control period for ownership be increased to 40 years. She expressed concern with the payment method and calculation for estimated construction cost and sale price of units for unbuilt development. She asked that the waiver be removed.
3. *David Shayt, 15 DeSillum Avenue*, spoke in support of the proposed changes, specifically the change in fee to Olde Towne developers.
4. *Demos Chrissos, Tschiffely Square Road*, referred to the eligibility requirements and asked for a clearer definition regarding the status of a resident in accordance with immigration laws.
5. *Susan Payne*, congratulated the City on having a better affordable housing plan than Montgomery County. She asked for clarification on the number of family members living in a house and suggested a square footage limitation be added. She expressed concern with illegal residents and crime having a negative impact on the affordable housing program.

6. *Prentiss Searles, 10 Walker Avenue*, expressed support for the exemption of Olde Towne and stated that it would help achieve the vision for Olde Towne.
7. *Jud Ashman, 46 Napa Valley Road*, expressed that the holding period is too long and that the escalation in owner equity is too small. He asked that an incentive be given for owners to maintain and make improvements to the property.
8. *Eydie Searles, 18 Walker Avenue*, asked that affordable housing be equally distributed through Gaithersburg and not keep it concentrated as it is in Olde Towne.
9. *Steven Shrimen*, expressed concern that the regulations are not important if they aren't going to be enforced. He asked that priority be given to government employees, teachers, and public safety employees for affordable housing.

Council Member Sesma referred to the housing cost on page 10, 8(b)(1), and questioned whether the expendable income for MDPU and WFHU pricing included homeowners insurance and taxes. Grants Administrator Boyle stated it is defined on page 2 and it is included. He also questioned the tax rate as market rates changed. She stated that the prices are revised annually and would allow the City Manager to take into account the economic factors.

There were no other speakers at the hearing.

Motion was made by Council Member Sesma, seconded by Council Member Alter, to close the City Council record on the above ordinance on January 11, 2007, 5 pm., with anticipated policy discussion (final action) on January 16, 2007.

Vote: 5-0

RECESSED THE MAYOR AND COUNCIL MEETING AT 8:44 P.M.
FOR A HISTORIC DISTRICT COMMISSION MEETING AND RECONVENED AT 8:55 P.M.

XI. ORDINANCES, RESOLUTIONS, AND REGULATIONS

1. Resolution to Allocate Funds for Playground Surface Replacement

This resolution approves the allocation of funds for playground surface replacement at St. Martin Tours of School to Playground Specialists, Incorporated, 17352 Seton Avenue, Emmitsburg, Maryland 21727, in an amount not to exceed Three Thousand Six Hundred Dollars (\$3,600); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Alster, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT FOR CONSTRUCTION SERVICES FOR THE MARKET SQUARE PLAZA RENOVATION PROJECT (Resolution No. R-4-07), be approved.

Vote: 5-0

2. Resolution Awarding a Matching Grant

This resolution authorized the City Manager to award a matching grant to the Kentlands Citizen Assembly for landscaping and lighting. The grant will be awarded upon determining that the project is completed as proposed in the total amount of Five Thousand Dollars (\$5,000); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Edens, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AWARDED A MATCHING GRANT TO KENTLANDS CITIZEN ASSEMBLY ASSOCIATION (Resolution No. R-5-07), be approved.

Vote: 5-0

3. Resolution to Negotiate a Contract for Executive Search Services for the Position of Chief of Police

This resolution authorizes the City Manager to negotiate a contract for an executive search for the position of Chief of Police with the International Association of Chiefs of Police, 515 North Washington Street, Alexandria, Virginia 22314, in an amount not to exceed Twenty-Four Thousand Dollars (\$24,000); said funds to be expended from the Capital Improvements Budget

Motion was made by Council Member Schlichting, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL OF GAITHERSBURG AUTHORIZING THE CITY MANAGER TO NEGOTIATE A CONTRACT FOR EXECUTIVE SEARCH SERVICES FOR THE POSITION OF CHIEF OF POLICE (Resolution No. R-6-07), be approved.

Vote: 5-0

XII. POLICY DISCUSSION AND STAFF GUIDANCE**1. An Ordinance to Repeal and Reenact With Amendments Section 15-4 of the City Code, Entitled "Loitering," so as to Clarify Existing Language With Regard To Prohibited Conduct, and Section 15-9, Entitled "Solicitation in Roadways," so as to Expand the Applicability of the City's Prohibition on Solicitation Specific to this Chapter**

City Attorney Borten stated that the record on the above closed on December 20, 2006, and staff is seeking guidance.

Several City Council Members expressed support for the ordinance, but believe that the ordinance should go hand and hand with the identification of a site on county property in order to resolve the issues. Enforcement concerns were raised without a site being established. Other concerns were expressed for pedestrian safety and loitering.

Mayor Katz reported that a date has not been set, but County Executive Leggett and County staff has asked to meet with the Mayor and City Council and City staff during the month of January to identify a day laborer site.

Motion was made by Council Member Marraffa to adopt the above ordinance, no second was made.

Motion was made by Council Member Alster, seconded by, Council Member Schlichting, that the vote on the above ordinance, be deferred.

Vote: 4-1 (Opposed: Marraffa)

2. T-377 – An Ordinance to Amend Chapter 24 of the City Code Entitled “Zoning” so as to Create New Article XV Entitled “Adequate Public Facilities” so as to Require That Public Facilities be Deemed Adequate to Serve Development Which is Subject to Various Land Use and Development Approvals and to Set Forth Applicable Procedures And Standards for the Determination Thereof

Planning and Code Administration Director Ossont stated that the Mayor and City Council gave guidance on the above ordinance during previous work sessions and public hearing. He stated that the Planning Commission reviewed and discussed the draft ordinance at their November 1 and 15, 2006 meeting. The Planning Commission recommended that the Mayor and City Council defer action until additional information was provided. The Commission also recommended that applicability language be included in any ordinance and that adequacy of water and sewer be determined prior to development approvals rather than permit approvals. Mr. Ossont stated a key issue not resolved during the public hearing was how budgeted, but not built, school capacity is credited. Staff has drafted two versions of the ordinance for the City Council to take action. The first version gives school capacity credit for any project contained in the Montgomery County Public School (MCPS) six year MCPS Educational Facilities Master Plan and Capital Improvements Program. The second version only gives credit for school projects budgeted with a two year timeframe. He further stated that both versions contain the applicability language and the development approval language recommended by the Commission.

Council Member Edens expressed support for the two year version. Council Member Schlichting expressed opposition to both versions of the APFO. He stated that the City's ordinance should be consistent with the surrounding counties ordinance or less, but not stronger. Council Member Marraffa expressed support for the six year version in order to allow time for a major project to be built. Council Member Sesma stated that the budget and capital planning process is based on two years. He stated that MCPS can make adjustments and provide infrastructure within two years. Council Vice President Alster stated that there have been six year plans that do not get completed on time and believe that the two year requirement would give the City assurance of what is likely to be available and getting built. Mayor Katz stated that what the county has done in the past has not work and expressed support for the two years.

Motion was made by Council Member Edens, seconded by Council Member Alster, that the Ordinance (Ordinance No. O-1-07), two year version, be adopted.

Vote: 3-2 (Opposed: Marraffa and Schlichting)

3. Regulation Establishing Traffic Impact Study Standards

Planning and Code Administration Director Ossont stated a public hearing was held on October 9, 2006. Pursuant to Section 24-224 of the Adequate Public Facilities Ordinance, the Mayor and City Council must approve Traffic Impact Study Standards via regulation. Staff sought guidance to bring back for final action.

Staff was directed to prepare the necessary document for a vote at the next Mayor and City Council meeting schedule for January 16, 2007.

XIII. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:35 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant